Retired

The Rev. John Quinn Geiger, Jr., of Wellsburg, recently announced his retirement from active ministry in the West Virginia Conference of the United Methodist Church after having served 40 years as a pastor.

He began his ministry in 1940 while living in Beckley, and served nine pastoral charges which were: Nuttallburg, Green Sulphur Springs, Williamsburg, Huntsville, Kenova, Athens, Warwood, Wheeling, Wellsburg, and Kadesh Chapel. To mark this achievement, his wife and children gave recognition to him on Sunday, June 15, 1980, by presenting an engraved brass set of candlesticks to the Kadesh Chapel United Methodist Church in his honor and by offering a program of music to the congregation. Rev. and Mrs Geiger are the parents of ~~six~~ children: Rev. J. Q. Geiger, Jr., Dick); Good Hope; Mrs Mike (Ellen) Dickerson, Painesville, Ohio; Rev. Joseph Geiger, Glen Dale; Mrs. Edward Marks (Irene), Wellsburg; Mrs George (Barbara) Johnson, Grand Rapids Michigan; and Roger, a student at West Virginia University but living at home.

The congregation, with Mr. and Mrs. John McCord as chairpersons, hosted a luncheon following the services and presented to Rev. Geiger a Gift in recognition of his ministry and retirement.

Rev. Geiger attended school in Pocahontas County, graduated cum laude from Glenville State College, and received theological training at Westminster School of Theology and Drew Theological School. He is the author of the book; Man from Michael's Mountain, which

characterizes the life and times of an itinerant pastor in Appalachia. He and his wife, the former Velma Mae Huffman, plan to make their home in Wellsburg.

Mr. Geiger, the son of the late John Michael Geiger and Anna Jerdina Steele Geiger, was born and spent his early years at Stony Bottom. His sisters living in Pocahontas County are; Mrs. O.B. (May) Curry, of Marlinton, and Mrs Carl (Grace) Galford, living at Cass.

Pocahontas Times

Rev. John Quinn Geiger

John Quinn Geiger, of Wellsburg, passed away at the home of his daughter in Grandville, Michigan, on July 17, 1984.

As a member of the West Virginia Methodist Conference, Rev. Geiger's ministry spanned a period of more than forty years, serving Nuttalburg, Green Sulphur Springs, Williamsburg, Grantsville, Kenova, Athens, Warwood (Wheeling), Wellsburg, and Kadesh Chapel.

Funeral services were conducted at the United Methodist Church of Wellsburg, where he had been pastor for six years. Burial was in the Memorial Gardens of Kadesh Chapel by the side of his wife of nearly fifty years, who had preceded him in death eighteen months before.

Surviving are three sons: John Quinn, Jr., of Grantsville, Joseph N., of Huntington, and Roger, of Harpers Ferry; three daughters, Ellen Gilkerson, Kinesville, Ohio, Irene Marks, of Wellsburg, and Barbara Johnson, of Grandville, Michigan; two sisters, May Curry, of Marlinton, and Grace Galford, of Cass; one brother, Layke Geiger, of Durham, North Carolina; sixteen grandchildren also survive.

The Pocahontas Times

V. W. Geiger

Vaughn William Geiger, age 65, died Thursday, April 9, 1959, at his home at Cass after a long illness.

Survivors include his wife, Mrs. Gladys Geiger; four daughters, Mrs. Gladys Gilbert of Elton, Maryland, Mrs. Ann Stacy of France, Miss Mary Geiger of Chicago, Illinois, and Miss Margaret Geiger, at home; four sons, Raymond Geiger of Florida, Ralph Geiger of Painesville, Ohio, James Geiger and Andy Geiger, both at home; five sisters, Mrs. O. B. Curry of Marlinton, Mrs. D. M. Weiford of Roanoke, Virginia, Mrs. Emory Withrow and Mrs. W. W. Burner of Piedmont, and [illegible]ora.) Carl Dalford of Cass; four brothers, the Rev. J. L. Geiger of Kenova, L. S. Geiger of Alderson, L. G. Geiger of Stony Bottom, and D. B. Geiger of Cass; and eleven grandchildren.

Funeral services were held Sunday in the Alexander Memorial Church at Stony Bottom by the Rev. Philip Newell and the Rev. C. E. Potts, with burial in the family cemetery.

The Pocahontas Times

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JUDY CURRY,

Plaintiff,

v. **CIVIL ACTION NO. 2:03CV115**
(Judge Maxwell)

WALTER W. WEIFORD, personally and in his official capacity as Prosecuting Attorney of Pocahontas County, West Virginia; ROBERT A. ALKIRE, personally and in his official capacity as Sheriff of Pocahontas County, West Virginia; DAVID A. WALTON, personally and in his official capacity as Deputy Sheriff of Pocahontas County, West Virginia; and COUNTY COMMISSION OF POCAHONTAS COUNTY, WEST VIRGINIA,

Defendants.

ORDER

I. Introduction

On December 22, 2003, the plaintiff filed a *pro se* civil action against the above- named defendants pursuant to 42 U.S.C. §1983, 42 U.S.C. § 1985, 18 U.S.C. §241, and W.Va. Code §§61-2-9, 61-5-27, and 61-5-28 seeking monetary damages and a permanent injunction enjoining the defendants from continuing to violate her civil and constitutional rights.

On June 13, 2005, the defendants filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Because the plaintiff is proceeding *pro se*, the Court issued a notice pursuant to Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975) advising the plaintiff of her right to respond to the defendants' motion for summary judgment. On July 18, 2005,

the plaintiff filed a response. On July 26, 2005, the defendants filed a reply. On August 4, 2005, the plaintiff filed a Reply to Defendants' Reply to Plaintiff's Reply to Defendants' Motion for Summary Judgment. This matter has been fully brief and is now ripe for judicial review.

II. Plaintiff's Contentions

The plaintiff asserts that on December 20, 2001, she went to the office of Defendant Weiford, the Pocahontas County Prosecutor, to complain that the Pocahontas County Sheriff's Department had failed to investigate the alleged theft of her beagle by Larken Dean, a cousin of Defendant Walton. The plaintiff alleges that Defendant Weiford told her he "'had no control' of the actions of the deputy, Brad Totten, whereby stating there was nothing he could do for the plaintiff relevant to the failure to act upon her civil complaint." (Complaint ¶10). The plaintiff further asserts that Defendant Weiford ordered her out of his office and shoved her "in the back repeatedly." (Complaint ¶12). According to the plaintiff, as a result of the alleged assault and battery committed by Defendant Weiford, she suffers from head, neck, and shoulder pain consistent with whiplash. (Id. at 13).

The plaintiff raises six counts in her complaint. Counts I, II, and III address alleged violations of state law for assault and battery; witness intimidation; and failure to perform the duties of prosecuting attorney.

In Count IV, the plaintiff alleges that she is bringing a claim pursuant to 42 U.S.C. §§1983, 1985 and 18 U.S.C. §241, because Defendants Weiford, Walton and Alkire "conspired to injure, oppress, threaten, intimidate, and interfere with the Plaintiff's free exercise and enjoyment of her rights and privileges under the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States. Plaintiff alleges that the Defendants, as a matter of policy and practice and under

color of law, repeatedly denied the Plaintiff equal protection and due process of law, whereby holding the relatives of Defendant Deputy Sheriff David A. Walton as 'above the law.'" (Id. at ¶22).

In Count V, the plaintiff raises a claim of intentional infliction of emotional distress. In Count VI, the plaintiff asserts that the County Commission engaged in "gross negligent supervision" and ignored the pattern and practice of selective prosecution.

III. Discovery

Pursuant to the Court's August 5, 2004 Scheduling Order, the parties had until May 27, 2005, to complete discovery. The Court notes that very limited discovery has occurred in this case. The plaintiff responded to the Defendants' First Set of Interrogatories and Request for Production of Documents. However, the plaintiff has not been deposed. Based on the information before the Court, it appears the following has occurred regarding the defendants attempts to schedule the plaintiff's deposition. By letter dated September 21, 2004, the defendants requested that the plaintiff provide them with dates she was available for deposition, and advised the plaintiff that her deposition would occur at the Pocahontas County Courthouse. No response was received. By another letter dated September 21, 2004, defense counsel made a second request for available dates to take the plaintiff's deposition, and advised her that her deposition would be held at the Pocahontas County Courthouse.[1]

On October 8, 2004, the plaintiff spoke with defense counsel, Drew S. Woods, regarding the location of her deposition. The plaintiff advised Mr. Woods that she did not want to have her deposition taken at the Pocahontas County Courthouse because such was the site of the incidents

[1]Defense counsel stated that the second request was erroneously dated September 21, 2004, as the letter was mailed on September 29, 2004.

alleged in her complaint. Thus, defense counsel offered to conduct the deposition at either their offices in Beckley or Charleston, West Virginia. However, the plaintiff requested that her deposition be conducted in a "motel room so that she could either lie-down or relax during the proceeding." The plaintiff was advised that she would be contacted at a later date.

The plaintiff sent defense counsel a letter dated October 7, 2004, in which she made numerous allegations against various individuals including "a federal judge."[2] Along with her October 7, 2004 letter, the plaintiff sent defense counsel a letter dated May 17, 2004 which she received from Dr. Debra C. Sams, D.O. Dr. Sams stated that the plaintiff had been her patient for over five years, and suffers from "recurrent severe depression" and "recurrent severe low back problems." Dr. Sams further stated "[d]ue to the severity of her depression and back problems, the simplest work tasks take a longer period of time. As a result of this, I feel Mrs. Curry to be totally disabled." The plaintiff also sent defense counsel a copy of a letter dated May 27, 2004 which she wrote to Dr. Sams. In her letter, the plaintiff described her various symptoms.[3]

Subsequently, by letter dated October 13, 2004, defense counsel advised the plaintiff that her deposition would be conducted either at the Pocahontas County Courthouse, or their offices in Beckley or Charleston, West Virginia. Defense counsel further advised the plaintiff that her failure to provide deposition dates within 7 days of the date of the correspondence would result in their

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[2]For example, the plaintiff calls the defendants "criminals" and states that there is "a federal judge who tampers with [her] cases in favor of political and personal friends."

[3]The plaintiff indicated that she has "extremely excessive pain, alternating from down both legs to severe pain of the sciatic nerve with total involvement of the right leg (which can bear no pressure), the hydrocodone (Lorcet 10/650 tabs) is no longer effective in controlling pain. It is still effective however, on the pain which radiates down the right arm from the cervicals." The plaintiff requested that she be given oxycodone for the pain.

filing a motion to dismiss.[4] The defendants eventually requested the Court order the plaintiff to subject to the taking of her deposition at either the Pocahontas County Courthouse or the law office of Pullin, Fowler, & Flanagan, PLLC, in Beckley, West Virginia. By order entered on November 17, 2004, the Court ordered the plaintiff to attend her deposition at the Beckley Office of Pullin, Fowler, & Flanagan, PLLC and within 7 days of the entry of the Order provide defense counsel with dates of her availability for her deposition.

On December 2, 2004, the defendants filed a Motion for Default Judgment pursuant to Rule 37 of the Federal Rules of Civil Procedure as a result of the plaintiff's "callous disregard to participate in discovery and obey an Order of this Court." (Doc. # 27 at 1).

By Order entered on April 1, 2005, the Court denied the defendants' motion for default judgment and ordered the plaintiff to show cause within 15 days of entry of the order why she failed to comply with the Court's November 17, 2004 Order and to provide medical evidence which documented her inability to attend her deposition at the office of defense counsel in Beckley, West Virginia.[5]

On April 14, 2005, the plaintiff filed a Motion for Extension of Time to Respond to Order to Show Cause. In her motion, the plaintiff stated that she had to " wait until April 8, 2005, to get an appointment with her physician." She also asserted that Dr. Sams is "preparing documents which are to be typed by an 'outside' clerical service for the Plaintiff to present to the Court." The plaintiff stated that she would respond to the Court's Order to Show Cause on or before April 26,

[4]Defense counsel asserts that they decided not to take the plaintiff's deposition in a motel room because there is no medical evidence which reveals her deposition must be taken in a motel room and because of "the continuous threatening behavior displayed by the plaintiff."

[5]The Court also denied the plaintiff's motion for sanctions of unethical conduct.

2005.

On April 26, 2005, the plaintiff filed a document titled Plaintiff's Response to Court Order Entered April 20, 2005, in which she stated that Dr. Sams is working on documentation for the plaintiff to submit to the Court. The plaintiff also argued that the defendants have acted unethically by failing to request her medical records.

On April 28, 2005, the plaintiff filed a document titled Plaintiff's Response to Order to Show Cause in which, among other things, the plaintiff alleged that had the defendants requested her medical records, they would have received the "just cause" as to why she had not complied with the Order of the Court. The plaintiff also attached a copy of the April 25, 2005 report of Dr. Sams and requested that her deposition be conducted at a neutral location in Marlinton, West Virginia.

Prior to the plaintiff making her filings on April 26, 2005, and April 28, 2005, on March 17, 2005, the plaintiff filed a Motion to Extend Time to Amend Pleadings and on April 4, 2005, she filed a Motion to Amend Pleadings.

By Order entered on May 10, 2005, the Court Ordered the defendants to file a response, if any, to the plaintiff's Response to Court Order Entered April 20, 2005 and Response to Order to Show Cause and plaintiff's Motion Extend Time to Amend Pleadings and Motion to Amend Pleadings.

On May 24, 2005, the defendants filed a reply to Plaintiff's Response to Order to Show Cause in which they argued that the plaintiff has failed to show cause why the deposition cannot be conducted at counsel's office in Beckley, West Virginia or the Pocahontas County Courthouse. In support of their position, the defendants stated as follows: "Dr. Sams' correspondence simply provides that the Plaintiff may be uncomfortable if required to travel to Beckley, West Virginia and

that it would be in her best interest to be deposed in Pocahontas County. Dr. Sams' correspondence makes no reference to any requirement that the Plaintiff can only be deposed lying down or in a 'geri-chair.'" (Doc. #45 at 2). The defendants also stated that the plaintiff's assertion that her physical disabilities prevent her from traveling to Beckley, West Virginia, for her deposition must be "**seriously questioned as the Plaintiff appeared for the Rule 26(f) meeting at Defense counsel's office in Beckley, West Virginia on July 7, 2004.**" (Id. at 3). The defendants further argued that Dr. Sams "provides no evidence or explanation as to any medical or psychological condition that would prevent the Plaintiff from being deposed at the Pocahontas County Courthouse"; that the defendants would "incur unneeded costs in conducting her deposition at either a 'motel room' in Pocahontas County, West Virginia, or as Dr. Sams suggests in a conference room located in Pocahontas County Hospital"; and that "[i]t is simply not the Defendant's burden to incur further costs in acquiring Plaintiff's medical records to determine if the Plaintiff's refusal to be deposed in Beckley, West Virginia is legitimate, in particular, in light of the fact that Plaintiff previously appeared at the Beckley office for the Rule 26(f) meeting." (Id. at 4-5).

The defendants requested that the Court strike the plaintiff's pleadings and enter default judgment against the plaintiff. In the alternative, the defendants requested that the Court sanction the plaintiff and award the costs and fees associated with the taking of the plaintiff's deposition to the plaintiff.

IV. Analysis

A. Motion to Amend

On April 4, 2005, the plaintiff filed a Motion to Amend her complaint to add a claim under 18 U.S.C. §1961 for RICO violations against the current defendants and 8 potential defendants.

On May 25, 2005, the defendants filed a Response to Plaintiff's Motion to Amend Pleadings wherein the defendants asserted that the plaintiff attempts to use an alleged drug trafficking ring to raise a RICO cause of action against 8 individuals and that the plaintiff's new allegations of a RICO violation "could not possibly have resulted out of the same transaction, occurrence or series of transactions or occurrences resulting from the alleged incident on December 20, 2001." (Doc. #46 at 4). The defendants further asserted that "it is preposterous to believe that the eight (8) individuals are somehow conspiring against Plaintiff to benefit any interstate or foreign commerce as they have no common connection by law or fact" and that the plaintiff's allegation of an enterprise is based on acts of vandalism and stalking directed towards her. (Id. at 5). Thus, the defendants concluded it would be complete waste of judicial economy to allow the plaintiff to amend her complaint.

Federal Rule of Civil Procedure 15(a) provides that "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." "In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance to the amendment, futility of amendment, etc. -- the leave sought should, as the rule requires, be 'freely given.'" Foman v. Davis, 371 U.S. 178, 182 (1962). See also Sandcrest Outpatient Services, P.A. v. Cumberland County Hosp. System, Inc., 853 F.2d 1139, 1148 (4th Cir. 1988). However, the court has the discretion to either grant or deny the motion to amend. Foman, 371 U.S. at 182.

The defendants answered the complaint on April 13, 2004. The petitioner wants to add

totally new claims against totally new defendants as well as the existing defendants. The RICO claims are unrelated to the allegations in the plaintiff's complaint. Thus, the plaintiff's motion to amend is DENIED.

B. Motion for Summary Judgment

On June 13, 2005, the defendants filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in which they argued that the plaintiff has failed to provide any evidence prior to the close of discovery on May 27, 2005; that Defendants Weiford, Alkire and Walton have qualified immunity; and the Pocahontas County Commission cannot be liable on the basis of *respondeat superior*.

The plaintiff responded by stating that the defendants' interrogatories were "idiotic"; by making allegations against the Court and defense counsel; by blaming the lack of discovery on the Court's failure to "rule on the issues pertaining to said conditions of being deposed"; and argued that the defendants do not have qualified immunity. The plaintiff requests "an immediate arrangement to be deposed, under her Doctor's reasonable conditions, on neutral territory so Defendants may not fabricate false reports regarding the Plaintiff and have her wrongfully arrested and taken away." (Doc. # 55 at 6). She further requests that she be granted IFP status so she can "initiate reasonable efforts of discovery." (Id.)

From the text of Rule 56(c) of the Federal Rules of Civil Procedure, it is clear that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

"When a motion for summary judgment is made . . . an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The Supreme Court has held as follows regarding summary judgment:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

"The burden on the moving party may be discharged by 'showing' -that is, pointing out to the district court-that there is an absence of evidence to support the non-moving parties' case." Id. at 325.

First, the Court notes that plaintiff did not timely file her response to the defendants' motion for summary judgment. By Order entered on June 14, 2005, the plaintiff was advised of her right to file a response to the defendants' motion for summary judgment within 14 days of the entry of the Order. On June 29, 2005, the plaintiff requested that she be given until July 15, 2005, to file a response because of her "indigency, lack of transportation, change in medication, and worsening of Plaintiff's radiculopathies in both arms caused by permanent disc and vertebral degeneration." By Order entered on July 5, 2005, the Court granted the plaintiff's request gave her until July 15, 2005 to file a response. However, the plaintiff did not file her response until July 18, 2005 claiming that her copier broke. Thus, technically, the defendants' motion for summary judgment is unopposed. However, pursuant to Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir.1993) where a

motion for summary judgment is unopposed, the district court must nonetheless ensure that the moving party is entitled to judgment as a matter of law. See also, Riccobene v. Scales, 19 F. Supp. 2d 577, n.1 (N.D. W.Va. 1998).

Thus, the Court has proceeded to determine whether there is a genuine issue of material fact. The Court notes that pursuant to the August 5, 2004 Order, discovery was to be completed on May 27, 2005. The plaintiff has not conducted any discovery whatsoever. "The fact that a litigant is proceeding *pro se* does not relieve [her] from [her]obligation to comply with the scheduling orders of the Court entered for the orderly conduct of litigation." Jackson v. DDD Company, 3 F. Supp. 2d 666 (D. Md. 1998). Further, the plaintiff failed to comply with the defendants' attempts to depose her, and the Court finds that the plaintiff has not shown cause for failure to comply with the defendants attempts to depose her.

The April 25, 2005 letter of Dr. Deborah C. Sams, does not indicate that the plaintiff could only be deposed lying down or in a "geri-chair," or that the plaintiff could not physically attend a deposition in Beckley. Instead, Dr. Sams states that the plaintiff "does have a history of chronic degenerative joint disease, she does have disc disease of the neck C6-C7. She also does have disc disease central mild herniation in the lower back as S1. She has chronic pain syndrome, insomnia issues. She is on multi-medications for the above as well as for severe and quite distinctive muscle spasms that she has in her low neck and back." With regard to the plaintiff's ability to travel to Beckley, Dr. Sams merely states the plaintiff would be "uncomfortable by the time she got there it would make it more difficult to answer questions because she would be dealing with acute fatigue syndrome as well as acute muscle discomfort." Dr. Sams further states that the plaintiff rarely drives herself and would have difficulty getting transportation to and from Beckley. Thus, the plaintiff has

not shown cause for failing to comply with the Court's November 17, 2004 Order.

Because the plaintiff has not developed any evidence whatsoever, there is no genuine issue material fact.[6] Specifically, in Count IV of her complaint, the plaintiff alleges that Defendants Weiford, Alkire and Walton conspired to violate her Fourth, Fifth, and Fourteenth Amendment rights and, as a matter of policy and practice, denied her equal protection and due process of law. It appears to the Court, when liberally construing the complaint as required by Haines v. Kerner, 404 U.S. 519, 520 (1972) and Gordon v. Leeke, 574 F. 2d 1147 (4th Cir. 1978), that the plaintiff is complaining that Defendant Weiford violated her constitutional rights by failing to investigate or prosecute Larken Dean. However, prosecuting attorneys are entitled to immunity when deciding whether to prosecute, even if the decision to prosecute is malicious. Imbler v. Pachtman, 424 U.S. 409, 427 (1976).

Further, prosecutors are absolutely immune for failing to independently investigate matters that are referred to them for prosecution. Van Cleave v. City of Marysville, Kansas, 185 F. Supp. 2d 1212 (D. Kan. 2002). Prosecuting attorneys are also entitled to absolute immunity for decisions not to prosecute. Roe v. City of San Francisco, 109 F.3d 578 (9th Cir. 1997); Harrington v. Almy, 977 F.2d 37 (1st Cir.1993); Wellman v. West Virginia, 637 F. Supp. 135 (S.D. W.Va. 1986). The decision whether or not to prosecute and what charges to bring rests entirely within the prosecutor's discretion. Wellman, 637 F. Supp. at 138. Consequently, Defendant Weiford has absolute immunity for his decision not to prosecute . The plaintiff has failed to submit any evidence that would defeat Defendant Weiford's immunity.

Moreover, to establish a civil conspiracy under 42 U.S.C. §1983, the plaintiff must prove that

[6]There is nothing in the record which indicates the plaintiff attempted to conduct any discovery on her behalf at all. The plaintiff blames her lack of evidence on the Court's denial of *in forma pauperis*.

the defendants acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in the plaintiff's deprivation of a constitutional right. Hinkle v. City of Clarksburg, WV, 81 F.3d 416 (4th Cir. 1996). The plaintiff has not produced any evidence of a conspiracy.

Additionally, the plaintiff states that in addition to bringing her conspiracy claim under §1983, she is also bringing her claim under 42 U.S.C. §1985 and 18 U.S.C. §241. First, 18 U.S.C. §241 is a criminal statute, and provides no basis for civil liability. See Moore v. Kamikawa, 940 F.Supp. 260 (D.Hawai'i 1995), aff'd 82 F.3d 423 (9th Cir. 1996). Further, in order to state a claim under §1985(3), a plaintiff must allege and prove the following four elements: "(1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy." Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir.1995). "Moreover, the law is well settled that to prove a section 1985 'conspiracy,' a claimant must show an agreement or a 'meeting of the minds' by defendants to violate the claimant's constitutional rights." Id. at 1377. Conclusory allegations of a conspiracy are insufficient to state a claim. Id.

Additionally, the defendants have raised the defense of qualified immunity. With regard to qualified immunity, the United States Supreme Court has provided that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitgerald, 457 U.S. 800, 818 (1982); see also Pritchett v. Alford, 973 F.2d 307, 312 (4th Cir. 1992).

The plaintiff has provided absolutely no evidence with regard to her claims in Count IV.

Thus, the defendants are entitled to summary judgment.

In Count VI, the plaintiff attempts to hold the County Commission liable on the basis of *respondent superior*. Municipal entities are absolutely immune from punitive damages, City of Newport v. Fact Concerts, 453 U.S. 247 (1981), and are not liable under the theory of *respondeat superior*. Monell v. Department of Social Services, 436 U.S. 658 (1978). However, a municipal entity may be liable for monetary, declaratory, and injunctive relief under §1983 if the execution of a municipal policy or custom was the "the moving force for the violation of constitutional rights." Id. at 694.

A policy can be made in a "policy statement, ordinance, regulations, or decision officially adopted and promulgated by the body's officers," Monell 436 U.S. at 690, by an act of a municipal official with final policymaking authority, City of St. Louis v. Praprotnik, 485 U.S. 112 (1988), or by widespread custom or practice. Monell, 436 U.S. at 691.

"[P]laintiffs seeking to impose liability on a municipality under §1983 must, therefore, adequately plead and prove the existence of an official policy or custom that is fairly attributable to the municipality and that the policy proximately caused the deprivation of their rights." Semple v. City of Moundsville, 195 F.3d 708, 712 (4th Cir. 1999), cert. denied, 528 U.S. 1189 (2000)(quoting Jordan by Jordan v. Jackson, 15 F.3d 333, 338 (4th Cir. 1994)).

The plaintiff has provided no evidence whatsoever of an official policy or custom of the County Commission regarding the issue at hand. Consequently, the defendants are entitled to summary judgment as there is absolutely no genuine issue of material fact.

With regard to the plaintiff's state law claims, Counts I, II, III and V, the defendants are

entitled to summary judgment. The plaintiff is bringing these claims pursuant to the Court's supplemental jurisdiction which allows federal courts to hear and decide state-law claims along with federal-law claims when they "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a); Wisconsin Dept. of Corrections v. Schacht, 524 U.S. 381, 387 (1998). Discretion rests with the district court to decline to exercise supplemental jurisdiction when:

> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

The Fourth Circuit Court of Appeals has provided additional guidance as to when a district court should exercise jurisdiction over state law claims, stating:

> A district court may exercise its discretion over state law claims made in the case through supplemental jurisdiction pursuant to 28 U.S.C. § 1367 when there is a federal basis for jurisdiction. See Shanaghan v. Cahill, 58 F.3d 106, 109 (4th Cir.1995). The district court exercises its discretion by considering factors that include: convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, or considerations of judicial economy."

Semple v. City of Moundsville, 195 F.3d 708, 714 (4th Cir. 1999), cert. denied, 528 U.S. 1189 (2000).

Because the Court has dismissed the plaintiff's federal claims, it declines to exercise

supplemental jurisdiction over the plaintiff's state law claims.

Consequently, in light of the foregoing, it is

ORDERED that the defendants' June 13, 2005 Motion for Summary Judgment is **GRANTED**. It is further

ORDERED that the plaintiff has failed to show cause for failing to comply with the Court's November 17, 2004 Order. It is further

ORDERED that the plaintiff's March 17, 2005 motion for extension of time to amend pleadings and her April 4, 2005 Motion to Amend pleadings are **DENIED**.

It is further **ORDERED** that the defendants' request for default judgment in Document #45 is **DENIED as MOOT** in light of the order granting the defendants' summary judgment.

It is further **ORDERED** that, in light of the Order granting defendants' summary judgment, this action is **DISMISSED** and retired from the docket of the Court.

IT IS SO ORDERED.

The Clerk of Court is DIRECTED to send copies of this Order to the pro se plaintiff and all counsel of record.

ENTER: September 21st, 2005

/s/ Robert E. Maxwell
UNITED STATES DISTRICT JUDGE

THE POCAHONTAS TIMES

Entered at the Postoffice at Marlin ton, W. Va., as second class matter

CALVIN W. PRICE, EDITOR.

THURSDAY, MARCH 18, 1926

Let us take up some more finished business. Move your calendar back about a hundred and fifty years

ton, W. Va., as second class matter

CALVIN W. PRICE, EDITOR.

THURSDAY, MARCH 18, 1926

Let us take up some more finished business. Move your calendar back about a hundred and fifty years. Something happened here then that had news value if they had only been known it at the time. Daniel Boone and Jacob Warwick had a fight at Clover Lick. After all it happened the other day and it is not too late to chronicle the event.

This is to do my bit to claim for West Virginia a large share of the of fame Daniel Boone, and as usual we have to fight for what we get.

"Seven cities warred for Homer being dead,
Who living had no roof to shroud his head."

The seven cities were Smyrna, Rhodes, Colonphon, Salamis, Ios, Argos and Athens.

Seven states contend for a share in Daniel Boone. They are Pennsylvania, Kentucky, Virginia, West Virginia, North Carolina, Tennessee, and Missouri. It can be shown that West

Argos and Athens.

Seven states contend for a share in Daniel Boone. They are Pennsylvania, Kentucky, Virginia, West Virginia, North Carolina, Tennessee, and Missouri. It can be shown that West Virginia treated him better than any of the other states, for it is to West Virginia that he owes his civil and military rank.

West Virginia was at one time filled with traditions of Daniel Boone. He was a hero and the subject of much conversation. His name was on the lips of the pioneers wherever they congregated.

One of the tales that impressed me most as a child was the time that Daniel Boone killed twenty Indians. I believed it then, but I doubt it now, as it seems to me that it would have been preserved in written history. It came to me this way. I was receiving instructions how to split a log to make fence rails, and the use of the big wooden wedges called gluts. These were made in the woods out of dogwood or other hard material, and if carelesslly made they would not draw and were inclined to jump out of the log by the lateral pressure. The expert said that twenty Indians surprised Daniel Boone in the woods making rails. Boone thought his time had come.

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hawked and scalped them at his leisure. Maybe they kept it out of the papers on account of a law against killing Indians, which law was more honored in its breach than its observance.

There is no reason to question the fact that Daniel Boone and Jacob Warwick had a fight. That is well established. My father who was *born two years after Jacob Warwick* died, knew him well. Alright, say that he knew about it well. My father was a great-grandson of Jacob Warwick, and he could get the story from his mother or grandmother, I reckon.

Boone was a surveyor and land looker but lacked the infinite capacity for taking pains to perfect the titles to his locations. He had started to take up land on Elk River, and had sold it to Jacob Warwick and got money for it. Some time later Jacob Warwick found that he had got nothing in the way of a completed title, and being a man who was then acquiring a great fortune in lands, he brooded over his loss. Then when

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Look at any reference book you pick up, you will find in it a life of Daniel Boone, yet none of the standard works even refer to his citizenship in Kanawha county, yet that is the only residence he ever had where he was honored by election to office, or where he ever received an officer's commission. He was elected to the Virginia legislature in 1790, with his colleague, George Clendenin. In

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When Daniel Boone sought to record some of the history that he had observed, he hooked up with a school teacher named Filson, and got out a publication called "The Adventures of Colonel Daniel Boone, formerly a hunter." This was when Boone was fifty-nine years old. Owing to the fact that Boone could not spell and Filson could not write, it did not add much to the sum of

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Daniel Boone is the beau ideal of pioneer times. He filled all the specifications in the way of height, good looks, endurance, skill, and courage. In his day they called these disciples of Ulysses the Long Hunters, owing to the fact that a few generations in the mountains had produced a race of giants, Of late years they have started to call them the Tall Men. This was suggested by the late Emerson Hough. It is said that he undertook to bring out three books on related subjects called a triology. The first

was The Covered Wagon, and the second was North of 36. The third was never written, his career being cut short by death. The third book was to have been called The Tall Men. This would have have referred to the pioneers of this section and the hero would have been Daniel Boone. It was an irreparable loss to us of the mountains, but it coincides with our rotton historical luck.

If I had time I would undertake it myself, but I do not seem to be able to abstain from eating long enough to write a book.

Why did men and women grow tall and beautiful when they settled in the mountains? The bible says that no man can add a cubit to his stature. Perhaps not, but there is no reason why with proper care the human cannot add half a foot or even half a cubit. It was done in the mountains. Even yet you can get a six foot company of militia together in

why with proper care the human cannot add half a foot or even half a cubit. It was done in the mountains. Even yet you can get a six foot company of militia together in any of these counties, but our foot is subsiding. See what you think of this theory? The mountaineers were the tallest people on earth because they were cornfed. Wheat was unknown in the mountains for generations. The child was raised on corn bread prepared from corn meal manufactured in a primitive manner from grain ground by stone burrs. It naturally follows that a child so fed will grow strong and tall whereas a white flour child may be stunted in its growth. Thirty years ago, cornbread was a standard article of diet in this country. There was even a kind of compact formation of great specific gravity called sweetened corn pone, first called johnny-cake. Johnny-cake is something else now. On this corn diet boys grew like live

kind of compact formation of great specific gravity called sweetened corn pone, first called johnny-cake. Johnny-cake is something else now. On this corn diet boys grew like live stock. It would be a day full of sorrow when corn was taken away from the beasts of the field. But it has happened that our precious children are deprived of this healthy food and forced to live on starch.

In the old days when the long hunters or tall men went to the lowlands and there were fed on wheat bread they almost unvariably got sick. They could not digest it. I have heard old timers talk about sick wheat many a time. When they first grew it they were afraid to eat it.

Daniel Boone's distinguishing mark was black hair and golden eyebrows, and blue eyes.

Just a few dates. Not enough to tire you. But you have got to use a few dates in history as you go along. Boone was a son of George Boone, a citizen of Berks County, Pennsylvania, the county of the city of Reading,

few dates in history as you go along. Boone was a son of George Boone, a citizen of Berks County, Pennsylvania, the county of the city of Reading, the strongest Democratic county in the world. When a boy, the family moved to the Yadkin river country in North Caroline. He was still on the eastern waters. There he grew to manhood and married Rebecca Bryan. He was born February 11, 1735, and died September 26, 1820, aged eighty-five years. To fix the period of his activities it may be mentioned that they correspond to the life and times of Jacob Warwick who survived him eight years.

When Boone was thirty-four years old, he was taken up by a certain rich man by the name of Henderson. who had dreams of an empire beyond the mountains. He sent Boone on an exploring trip and Boone spent much time around and about where Boonesboro, Kentucky, is located, giving it a claim to the oldest settlement in Kentucky, though Harrodsburg has perhaps the better claim by about two weeks.

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Henderson then got a color of title to a tract of land from the red men. This tract was about as big as the states of Kentucky and Tennessee, and Henderson dreamed of founding an empire to be known as Transylvania. He did elect one legislature of eighteen members, Daniel Boone and his brother, Squire Boone, being two of them. They held one session in 1775, but the Continental Congress was practiced upon in the usual style of honest politics and Transylvania was sunk without trace.

The first effort to colonize Kentucky was undertaken by Boone in 1773. He led a colony of settlers in that direction. There were some twenty families traveling in wagons, that were to be left when the Wilder

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The first effort to colonize Kentucky was undertaken by Boone in 1773. He led a colony of settlers in that direction. There were some twenty families traveling in wagons, that were to be left when the Wilderness Trail had been reached. They had got as far west as Powell's Valley when they encountered a war party of Indians. Powell Valley is the most western of the valleys of southwestern Virginia.

The party numbered about seventy persons. Daniel Boone sent his son James Boone in command of a squad of men to scout as flankers on one side of the march. On October 9th, 1773, this party of scouts camped a mile or so in the rear of the main camp for its protection. During the night, an Indian war party of Shawnees fired on the rear camp and killed

of men to scout as flankers on one side of the march. On October 9th, 1773, this party of scouts camped a mile or so in the rear of the main camp for its protection. During the night, an Indian war party of Shawnees fired on the rear camp and killed James Boone and five others. This was on the morning of October 10, 1773, just a year before the battle of The Point, and was the beginning of the movement that ended with the subduing the Indians in Dunmore's War. It also marked the beginning of Daniel Boone's feud with the Indians. From that time forth he was dangerous. Before then he might had killed Indians through a sense of duty. After that it was a pleasure.

Dunmore's complaint of the slaughter of the pioneers on the Western Waters always started with the Powell Valley battle. This caused this expedition to Kentucky to be given up. In Powell Valley the wagon train broke up and the settlers returned to their former

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Dunmore had come to Virginia and had announced his policy of inducing the council to open up the western waters for settlement, and this caused the land hungry people to organize surveying parties to do the work of surveying and locating so that they would be ready to take the titles without delay. They did not wait for spring. In 1774, they commenced to trail west as soon as the days began to lengthen. By June, Dunmore knew he had a war on hands, and one of the things he impressed upon Preston, the headman of Fincastle county, was to warn all those surveying parties that war was

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Ohio, (Louisville) and warn all surveying parties. These two men accomplished a journey of eight hundred miles in sixty-four days in the month of June. July, and August, 1774. In the meantime, Preston, and Andrew Lewis, and Charles Lewis had been drumming up the long hunters for the Lewisburg army.

When Boone got back, the army was already assembling at Lewisburg, and Boone reported there, and was detailed to take charge of Moore's Fort, at the mouth of Stony Creek, on Clinch River, in Scott County, Virginia. He had no commission. He was referred to in the dispatches as "Boone." The commandant of the fort next to him, Russel's was William Poage, Sergt., who was recommended for a com mission. That is the part that Boone played in Dunmore's War. He saw long and continous service. None longer but he was not at The Point, the day of the battle.

Boonesboro. That is the first year that the pioneers took their families with them. Boone stayed in Kentucky for eleven years, and he was an active and important member of that community, and he killed and scalped the Indians. He was captured. He fought two battles with the Indians at Blue Licks, and lost another son in battle with the Indians. He was a friend and contemporary of George Rogers Clark, of Albemarle County, Virginia. Those two heroes of Kentucky, were simply ruined by peace. After the war, they became as nothing to their companions, and the ruling forces. Clark was an outcast and a drunkard, and shunned by all. Boone was sober, upright, and popular, but because he had not complied with all the red tape in regard to location of land and proving his claim, he was dispossessed and retired from Kentucky in dis-

was an outcast and a drunkard, and shunned by all. Boone was sober, upright, and popular, but because he had not complied with all the red tape in regard to location of land and proving his claim, he was dispossessed and retired from Kentucky in disgust. He could overcome the red Indian, but red tape he could not understand

Then it was that he moved to Kanawha county, West Virginia, and settled at the mouth of Crooked Creek, on the Great Kanawha, on the battlefield. He and his wife acknowledged a deed at Point Pleasant in Greenbrier County, in 1786, for land in Kentucky, and that is best evidence of the date when Daniel Boone was driven out of the ungrateful state of Kentucky.

We then find the Boone family back on the West Virginia side of the Ohio river, having parted with Kentucky forever. There must have been some grievance against that state. Such as might have followed

battlefield. He and his wife acknowledged a deed at Point Pleasant in Greenbrier County, in 1786, for land in Kentucky, and that is best evidence of the date when Daniel Boone was driven out of the ungrateful state of Kentucky.

We then find the Boone family back on the West Virginia side of the Ohio river, having parted with Kentucky forever. There must have been some grievance against that state. Such as might have followed the loss of his land.

When he got back. Kanawha had growing pains. It was ready for countyhood, taking in nearly all of the territory south of the Midland Trail and a lot north of it. Of course it was a backward settlement. The people of Point Pleasant, St. Albans, and Charleston, were not

stylish like the people of Hunters-ville, Hillsboro, Frankford, Lewis-burg, and Union, in that day and time, however much dog they put on now. Boone was one of three most active men in the formation of that county. This is sufficiently proven by the fact that he was made lieutenant colonel of the county. Samuel Lewis was colonel, and George Clendenin and Andrew Don-nelly, members of the legislature. Boone was not a toiler. He could survey if you ever got him started and keep him at it. We know that he could not spell, but we know he was a man of a large vocabulary and was probably an orator. But here is something that tells me that he was a clever person and one that might conceive the idea of a new county and carry it out. One day when it was open season for Indians in Ken tucky he went out hunting and only killed two. But as he hung their scalps up to dry he remarked: Today

conceive the idea of a new county and carry it out. One day when it was open season for Indians in Kentucky he went out hunting and only killed two. But as he hung their scalps up to dry he remarked: Today I have been to Lulbegrud and killed two Brobdignags in their capital.

A man that could make that grim play on the words of Dean Swift, was a man of quality, condition, and character. The place where Boone got the brace of Shawnees is called Lulbegrue Creek, somewhere in the dark and bloody ground.

It is remarkable that the ten years or such a matter that Boone spent in Kanawha county could be so universally ignored by historians. The more I see of historians the more I am convinced that they are slow on the uptake. Boone's fifties were passed in Kahawha county, and the county of Kanawha is the proudest monument that he has today. He trailed to Missouri about the year 1795, where he lived for the remaining twenty-five years of his life. But his son or sons continued to reside here, and nearly all of the Boones